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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Common Carrier Bureau
Network Service Division
Office of the Chief

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In the Matter of

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Massachusetts Department of
Telecommunications and Energy
Petition for Waiver to Implement a
Technology Specific Overlay in the
508, 617, 781, 978 Area Codes

NSD File No. L-99-17

Federal Communications Commission
Office of Secretary

cc DOCKET 96-98

COMMENTS OF GTE SERVICE CORPORATION

Dated: April 5, 1999

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and wireless companies

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SUMMARY

In the Waiver Petition, the Massachusetts Department of Telecommunications and Energy ("MDTE") asks the Federal Communications Commission ("FCC" or "Commission") to waive section 52.19(c)(3) of its rules to enable the MDTE to consider implementing a technology-specific overlay plan in Massachusetts.

GTE urges the Commission to reject the Waiver Petition because the MDTE does not justify departure from the Commission's policy against numbering relief plans that discriminate against wireless carriers, as set forth in the *Ameritech Order* and subsequent FCC decisions.

Section 1.3 of the Commission's Rules provides that the Commission may waive provisions of its rules "for good cause shown . . ." According to Commission decisions on the subject, good cause requires the showing of two elements: (1) that special circumstances warrant a deviation from the rules, and (2) that such a deviation would serve the public interest. In this case, the MDTE has failed to satisfy either element.

As an initial matter, the MDTE, by its own admission, has not yet determined that a technology-specific overlay is the best way to address the number shortage in Massachusetts. As such, the MDTE petition is premature and should not be considered.

Even assuming that the MDTE Waiver Petition is ripe for consideration, the MDTE fails to establish that special circumstances exist. The only evidence the MDTE provides in support of its Waiver Petition is that 88 CLECs compete for business in Massachusetts. This evidence, even if accurate, does not constitute special

circumstances. First, the MDTE does not present evidence that competition is any more vigorous in Massachusetts than anywhere else in the country. Second, in adopting the prohibition against service- and technology-specific overlays, the FCC sought, *inter alia*, to protect wireless carriers' ability to compete with wireline carriers. The FCC did not base its rule on the level of competition in the local exchange market. Accordingly, the level of competition among wireline carriers in Massachusetts is irrelevant.

The MDTE also fails to show that a waiver of the prohibition against service- and technology-specific overlays is in the public interest. In adopting the prohibition, the FCC found that service- and technology-specific overlays would result in dialing disparity between wireless and wireline customers and force wireless customers and carriers to bear the brunt of the burden associated with implementing new area codes. The Waiver Petition fails to show how a technology-specific overlay plan in Massachusetts can overcome these two public interest considerations.

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Petition for Waiver to Implement a)	
Technology Specific Overlay in the)	
508, 617, 781, 978 Area Codes)	

COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation, and its telephone and wireless companies ("GTE"),¹ hereby files its comments in opposition to the petition for waiver ("Waiver Petition") filed by the Massachusetts Department of Telecommunications and Energy ("MDTE" or "Petitioner") in the above-captioned proceeding. In the Waiver Petition, the MDTE asks the Federal Communications Commission ("FCC" or "Commission") to waive section 52.19(c)(3) of its rules to enable the MDTE to consider implementing a technology-specific overlay plan in Massachusetts.² GTE urges the Commission to reject the Waiver Petition because the MDTE does not justify departure from the Commission's

¹ GTE's domestic telephone operating and wireless companies are: GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, and GTE Wireless Incorporated.

² See Public Notice, Pleading Cycle Established for Comments on Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 area codes, NSD File No. L-99-17 (released March 4, 1999).

policy against numbering relief plans that discriminate against wireless carriers, as set forth in the *Ameritech Order*³ and subsequent FCC decisions.

I. BACKGROUND

The FCC has twice ruled that service- or technology-specific telephone area code overlays violate the Communications Act. First, in the *Ameritech Order*, the Commission found that three facets of Ameritech's numbering relief plan for the 708 NPA violate Section 202(a) of the Communications Act ("the Act"), prohibiting unreasonable discrimination,⁴ and Section 201(b) of the Act, prohibiting unjust or unreasonable acts and practices.⁵ The Commission found that Ameritech's plan contained the elements of "exclusion" -- the exclusion of wireless providers from obtaining additional codes in the 713 NPA -- and "segregation" -- the segregation of wireless providers into a separate area code. These elements, the Commission determined, would confer significant competitive advantages on wireline companies in competition with wireless carriers. In addition, the Commission found that Ameritech's "take-back" proposal -- the requirement that customers relinquish their existing numbers in favor of numbers issued under the new NPA code -- required wireless carriers and their customers exclusively to bear the burdens associated with changing telephone numbers. The Commission found, further, that Ameritech's justification for the

³ Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, IAD File No. 94-102, *Declaratory Ruling and Order*, 10 FCC Rcd 4596 (1995) ("*Ameritech Order*").

⁴ *Id.*, at 4607-4608.

⁵ *Id.*, at 4610-4612.

discrimination was insufficient in light of disproportionate burden placed on wireless carriers.⁶

Second, in 1996, the FCC clarified and upheld its decision in the *Ameritech Order*. There, in the context of implementing local competition provisions of the Telecommunications Act of 1996,⁷ the Commission stated:

we conclude that any overlay that would segregate only particular types of telecommunications services or particular types of telecommunications technologies in discrete area codes would be unreasonably discriminatory and would unduly inhibit competition. We therefore clarify the *Ameritech Order* by explicitly prohibiting all service-specific or technology-specific area code overlays because every service-specific or technology-specific overlay plan would exclude certain carriers or services from the existing area code and segregate them in a new area code . . . Exclusion and segregation were specific elements of Ameritech's proposed plan each of which the Commission held violated the Communications Act of 1934.⁸

In the same order, the Commission ruled that a wireless-only overlay plan proposed by the Texas Public Utility Commission for Houston and Dallas violated Sections 202(a) and 201(b) of the Act. In addition, the Commission found that the Texas action was

⁶ Ameritech argued that creating a separate NPA code for wireless providers was justified because: (1) wireless carriers were largely responsible for exhausting the existing number supply; (2) the wireless overlay would provide the necessary relief; and, (3) the transfer of numbers would not have a significant impact on wireless customers or carriers. *Ameritech Order* at 4606 (¶ 23).

⁷ Pub. L. No. 104-104, 110 Stat. 56 (1996) (hereinafter "1996 Act").

⁸ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392 (¶ 285) (hereinafter "*Second Report and Order*"), *vacated in part*, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir., 1997), *vacated in part*, *AT&T Corp. v. Iowa Utilities Board*, 119 S.Ct 721 (1999). The Commission's rules with respect to service- and technology-specific overlays is codified at 47 C.F.R. § 52.19(c)(3).

inconsistent with the numbering policies adopted in the *Ameritech Order* and clarified in the *Second Report and Order*.⁹

Since the *Second Report and Order*, the Commission has sought comment on a petition for rulemaking filed by the Connecticut Department of Public Utility Control ("DPUC"). The DPUC asked the FCC to open a rulemaking proceeding to amend its policy with respect to service- or technology-specific overlays to allow states to adopt such overlays as a means of addressing telephone number exhaust problems caused by the growth of local competition.¹⁰ The DPUC argued that despite its efforts and the efforts of the FCC, "no competition between wireline and wireless industries currently exists. Nor does it appear that competition between the two industries will exist in the very near future."¹¹

GTE and other parties filed comments opposing the DPUC's request for rulemaking. GTE argued that the FCC's policy against service- and technology-specific overlays removes barriers to competition between wireless and wireline providers. Moreover, GTE argued that the amount of competition between wireless and wireline carriers was not a basis on which to deviate from the Commission's policies against

⁹ *Id.*, at 19527-28.

¹⁰ Petition of the Connecticut Department of Public Utility Control for Amendment to Rule Making, RM No. 9258, DA 98-743.

¹¹ *Id.*, at 8.

exclusion, segregation, and take-back because the wireless-only overlays "impose a disproportionate burden on wireless carriers and their customers."¹²

On February 12, 1999, the MDTE filed its petition requesting that Commission waive the provisions of 47 C.F.R. Section 52.19(c)(3) and permit the Petitioner to implement a technology-specific or service-specific overlay in the 508, 617, 781, and 978 area codes in Eastern Massachusetts. The MDTE requests a waiver as part of its ongoing area code relief plan investigation for these area codes.¹³ The Waiver Petition follows a letter that Massachusetts Governor A. Paul Cellucci sent to Commission

¹² *Ameritech Order* at 4611.

¹³ The MDTE Waiver Petition, in two instances, cites to the Commission's decision last year regarding numbering issues in Pennsylvania. Waiver Petition at 2 and 3-4, *citing*, Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Memorandum Opinion and Order and Order on Reconsideration*, NSD File No. L-97-42, CC Docket 96-98, 13 FCC Rcd 19009 (1998) ("*Pennsylvania Numbering Order*"). The MDTE does not make clear the purpose of its reference to the *Pennsylvania Numbering Order*. GTE is concerned, however, that by citing to the *Pennsylvania Numbering Order* in the Waiver Petition, the MDTE is confusing FCC rulings with respect to number conservation measures and NPA relief measures. The *Pennsylvania Numbering Order* made clear that states have very limited authority to implement number conservation measures. The order provided, however, that the FCC would consider granting additional limited delegated authority to states that apply for such authority to implement number conservation measures. *Pennsylvania Numbering Order*, at 19030 (¶ 31). States do have delegated authority to implement number code relief plans. Any such plans must be implemented in accordance with FCC rules, including Section 52.19(c)(3) – prohibiting service and technology-specific overlays. The *Pennsylvania Numbering Order* cannot be interpreted as an invitation to seek waiver of the FCC's area code relief plan requirements.

Chairman William E. Kennard seeking additional authority, including authority to implement a technology-specific waiver.¹⁴

II. DISCUSSION

Section 1.3 of the Commission's Rules provides that the Commission may waive provisions of its rules "for good cause shown . . ."¹⁵ According to Commission decisions on the subject, "[g]ood cause requires the showing of two elements: (1) that special circumstances warrant a deviation from the rules, and (2) that such a deviation would serve the public interest."¹⁶

A. The MDTE has demonstrated no special circumstances that warrant a waiver to implement a service or technology-specific overlay.

The MDTE requests a waiver of the prohibition against service- and technology-specific overlays so that it may consider whether implementing a technology-specific overlay is appropriate at this time. The MDTE asserts that "[w]hether a technology-specific or service-specific overlay would unreasonably discriminate and unduly inhibit competition in Massachusetts can be best explored by state regulators on the basis of their knowledge of local market conditions."¹⁷ The MDTE asserts that the

¹⁴ Letter of Governor A. Paul Cellucci, Commonwealth of Massachusetts, to Honorable Chairman William E. Kennard, dated February 2, 1999. GTE notes that the primary content of Governor Cellucci's request relates to number conservation measures.

¹⁵ 47 C.F.R. § 1.3.

¹⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

¹⁷ Waiver Petition, page 5.

Massachusetts telecommunications marketplace is extremely competitive, and for that reason requests that state regulators be permitted to investigate whether a technology-specific overlay would unduly inhibit competition based on local market conditions.

The MDTE provides no circumstances that warrant a waiver, let alone any extraordinary reasons for deviating from the FCC's established policy. Indeed, as an initial matter, the MDTE request is premature. The MDTE requests the right to *consider* implementing a technology-specific overlay. Thus, by its own admission, the MDTE has not yet determined whether a technology-specific overlay would resolve the number shortages being experienced in Eastern Massachusetts and, if so, whether such an overlay is the only feasible means of resolving the number shortage.¹⁸ Absent a determination that the MDTE has considered all alternatives and wants to pursue implementing a technology-specific overlay in Massachusetts, the MDTE cannot possibly meet its burden of showing that special circumstances exist that warrant such an overlay.

Even assuming that the MDTE Waiver Petition is ripe for consideration, the MDTE fails to establish that special circumstances exist. First, the MDTE shows nothing special or unique about the telecommunications market in Eastern Massachusetts. The totality of the evidence submitted by the MDTE regarding the level of competition in Massachusetts consists of one sentence stating that 88 registered

¹⁸ *Id.*, page 5-6 ("The Department has not made any substantive findings on whether a technology-specific overlay is appropriate at this time.").

competitive local exchange carriers operate in the marketplace.¹⁹ Competition in local markets, however, is growing in all areas of the country, and nothing in the MDTE Waiver Petition suggests that competition in Eastern Massachusetts is any further developed than anywhere else.

Second, the MDTE is incorrect that the Commission's policy prohibiting service- and technology-specific overlays depends on the level of competition among wireline local exchange carriers in the market. The Commission has determined that service- or technology-specific overlays are "unreasonably discriminatory and would unduly inhibit competition."²⁰ In reaching this conclusion, the Commission sought to protect the ability of wireless carriers to compete with wireline carriers. The FCC did not base its decision on the level of competition among local exchange carriers in any market.

Because the level of local exchange competition in the market was not a basis for the Commission's decision to prohibit service- and technology-specific overlays, the evidence presented by the MDTE regarding the level of wireline competition in Massachusetts, regardless of its accuracy and regardless of whether that level has changed since the *Second Report and Order*, is entirely irrelevant. Accordingly, such evidence should not be considered in any request for a waiver of the rule prohibiting service- and technology-specific overlays.

¹⁹ *Id.*, page 5.

²⁰ *Second Report and Order* at ¶ 285.

B. The MDTE has not demonstrated that a technology-specific overlay would serve the public interest.

Perhaps as much or more than most carriers, GTE recognizes that access to numbering resources is an important issue. As an incumbent local exchange carrier, wireless carrier, and competitive local exchange carrier, GTE is all-too familiar with the difficulties the Commission faces in carrying out its statutory duty to ensure that telephone numbers are available on an equitable basis.²¹ It is in light of this statutory duty that GTE urges the Commission to find that the MDTE Waiver Petition is not in the public interest.

The FCC, both on its initiative and in implementing the provisions of the 1996 Act, has begun to amend its regulatory policies to remove barriers to competition so that providers of different services will be able to compete with local exchange service providers.²² As part of that goal, the Commission has proposed rule changes to facilitate wireless/wireline competition.²³ In light of these policies and proceedings, it can safely be said that the FCC has determined that wireless/wireline competition serves the public interest.

²¹ 47 U.S.C. § 251(e)(1).

²² See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *Notice of Proposed Rulemaking* (released April 19, 1996) ("*Local Competition NPRM*").

²³ See, e.g., Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8965 (1996).

In crafting the 1996 Act, Congress recognized that dialing parity is crucial to carriers' ability to compete with one another.²⁴ However, if a wireless overlay is implemented, a wireline customer placing a local call to another landline customer would require dialing only seven digits, but a local call placed from a landline customer to a wireless customer would require dialing ten digits. Likewise, a call placed from a wireless customer to a wireline customer would require dialing ten digits.²⁵

In addition to the competitive harm that would result from a technology-specific overlay, implementation of a wireless overlay in Massachusetts would require wireless carriers and customers to bear a disproportionate share of the burden associated with implementing a new area code. Thus, as the Commission found in the *Ameritech Order*, wireless-only overlays "impose a disproportionate burden upon wireless carriers and their customers."²⁶ In particular, the FCC found that wireless customers "would suffer the cost and inconvenience of having to surrender existing numbers and go through the process of reprogramming their equipment, changing over to new numbers, and informing callers of the new numbers."²⁷ Accordingly, the FCC concluded that a

²⁴ 1996 Act, § 251(b)(3).

²⁵ GTE notes that Section 52.19(c)(3)(ii) requires dialing parity in overlay situations. However, because the MDTE has requested a waiver of Section 52.19(c)(3), granting that request would permit the MDTE to allow disparate dialing requirements to exist.

²⁶ *Ameritech Order* at 4611 (¶ 35).

²⁷ *Id.*, at 4608 (¶ 27).

wireless-only overlay would constitute both unreasonable discrimination under Section 202(a) of the Act, and an unreasonable practice under Section 201(b) of the Act.²⁸

The Waiver Petition does not suggest any means by which a service- or technology-specific overlay implemented in Massachusetts would address the disparate treatment of wireless customers that results from technology-specific overlay plans. Accordingly, nothing in the MDTE Waiver Petition would support a deviation from the Commission's previous findings that service- and technology-specific overlays are not in the public interest.

²⁸ *Id.*, at 4607-4608, 4610-1612. See also, *Second Report and Order* at ¶ 285.

III. CONCLUSION

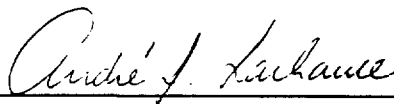
GTE opposes the request for waiver filed by the MDTE. The MDTE has failed to meet the well-established standards for obtaining a waiver of FCC rules. In particular, the MDTE has failed to show that special circumstances exist that warrant a deviation from the general prohibition against service- or technology-specific overlays. In addition, the MDTE has failed to show that a waiver would serve the public interest. Accordingly, the MDTE waiver request should be denied.

Dated: April 5, 1999

Respectfully submitted,

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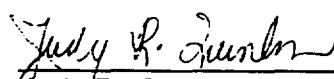
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CERTIFICATE OF SERVICE

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Comments of GTE Service Corporation" have been mailed by first class United States mail, postage prepaid, on April 5, 1999 to the party listed below:

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